U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 3
November 2014

ARIZONA HB 2115 (CH 237) — ENACTED April 25, 2014; EFFECTIVE July 24, 2014

Nonmonetary Eligibility

Defines severance pay to include all payments made due to a resignation, termination, or as part of an exit incentive program, reduction in force, or in consideration of actual or potential claims for termination. Provides that severance pay does not include payments for health benefits or for any employee benefit plan.

FLORIDA HB 7081 (CH 40) — ENACTED and EFFECTIVE May 12, 2014

Financing

Requires an employer to produce for inspection and copying all work records to the Department of Economic Opportunity or its tax collection service provider to receive a reduced rate. Failure to produce the records within at least 60 days will result in a standard rate assignment.

Beginning January 1, 2015, provides that the interest rate for unpaid contributions may not exceed 1.0 percent per month.

FLORIDA Rule 40139 — ADOPTED August 26, 2014; EFFECTIVE September 15, 2014

Nonmonetary Eligibility

Removes the requirement that, unless exempted or when special assistance or accommodation is required, the claimant must complete the initial skills review prior to completing his or her first continued claim.

GEORGIA HB 714 (Act No. 625) — ENACTED April 24, 2014; EFFECTIVE April 24, 2014, or as noted

Administration

Expands the definition of "agency" to include the Department of Labor when conducting hearings related to unemployment benefits or overpayments of unemployment benefits.

Appeals

Provides that the decision of the board shall become final 15 days from the date the decision is mailed to the parties.

Provides that the board of review may, in its discretion and on its own motion, reconsider its decision at any time within 15 days from the date the decision is mailed to the parties. (Previously, within 15 days of the release of the final decision of the board.)

Provides that the petition for judicial review against the Commissioner of the Department of Labor, which need not be verified but which shall state specifically the grounds upon which a review is sought, shall be served upon the Commissioner or upon his or her designee within 30 days from the date of filing. Such service upon the Commissioner shall be made by certified mail or statutory overnight delivery, return receipt requested; hand delivery; or in a manner prescribed by the law of this state for service of process to Georgia Department of Labor, Unemployment Insurance Legal Section, Suite 826, 148 Andrew Young International Boulevard, N.E., Atlanta, GA 30303-1751. Such service shall be deemed completed service on all parties, but there shall be so served upon the Commissioner or his or her designee as many copies of the petition as there are respondents.

Extensions and Special Programs

Provides that, in addition to and subsequent to payment of the maximum benefits payable in a benefit year otherwise allowed, whenever the average rate of total unemployment in Georgia, seasonally adjusted, as determined by the U.S. Secretary of Labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of such week equals or exceeds 11 percent, weekly unemployment compensation shall be payable to any individual who is unemployed, has exhausted all rights to regular unemployment compensation, and is enrolled and making satisfactory progress, as determined by the Commissioner, in a training program approved by the Department, or in a job training program authorized under the Workforce Investment Act of 1998, Public Law 105-220, and not receiving similar stipends or other training allowances for nontraining costs. Each such training program approved by the Department or job training program authorized under the Workforce Investment Act of 1998 shall prepare individuals who have been separated from a declining occupation, as designated by the Department from time to time, or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, for entry into a high-demand occupation, as designated by the Department from time to time. The amount of unemployment compensation payable to an individual for a week of unemployment shall be equal to the individual's weekly benefit amount for the individual's most recent benefit year less deductible earnings, if any. The total amount of unemployment compensation payable to any individual shall be equal to 14 times the individual's weekly benefit amount for the individual's most recent benefit year, if the average unemployment rate in Georgia is at or below 6.5 percent, with an additional weekly amount added for each 0.5 percent

increment in this state's average unemployment rate above 6.5 percent up to a maximum of 20 times the weekly benefit amount if the average unemployment rate in Georgia equals or exceeds 9 percent. The provisions of subsection (d) of Code Section 34-8-195 shall apply to eligibility for benefits. Except when the result would be inconsistent with other provisions, all other provisions of the unemployment compensation law shall apply to the administration of the provisions.

Financing

Provides that the amounts collected from the 15 percent penalty assessed on fraudulent overpayments shall be deposited into the state Unemployment Compensation Fund to be used exclusively for the purposes of the unemployment compensation law as required by federal law.

Requires an employer to respond in a timely and adequate manner to a notice of a claim filing or a written request by the Department for information relating to a claim for benefits. Any violation of this requirement by an employer or an officer or agent of an employer, absent good cause, may result in the employer's account being charged for overpayment of benefits paid due to such violation even if the determination is later reversed; provided, however, that upon the finding of three violations within a calendar year resulting in an overpayment of benefits, an employer's account shall be charged for any additional overpayment and shall not be relieved of such charges unless good cause is shown.

Nonmonetary Eligibility

Provides that benefits based on service in employment as defined in subsections (h) and (i) of Code Section 34-8-35 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other services, except for benefits based on service in educational institutions.

Defines the term "educational institution" to mean any voluntary pre-kindergarten program, elementary or secondary school, postsecondary institution, or other provider of educational services, irrespective of whether such program, school, institution, or other provider is public or private, or nonprofit or operated for profit, provided that it:

(i) Is approved, licensed, or issued a permit, grant, or other authority to operate as a program, school, institution, or other provider of educational services by a federal, state, or local government or any of the instrumentalities, divisions, or agencies thereof with the authority to do so; and

(ii) Offers, by or under the guidance of teachers or instructors, an organized course of study or training in a facility or through distance learning which is academic, technical, trade related, or preparation for gainful employment in a recognized occupation.

Authorizes the Commissioner to establish, by rules or regulations, such exceptions or exemptions from the term "educational institution" deemed appropriate, consistent with any federal program requirements.

Defines the term "educational service contractor" to mean any public or private employer or other person or entity holding a contractual relationship with any educational institution or other person or entity to provide services to, for, with, or on behalf of any educational institution.

Defines the term "educational service worker" to mean any person who performs services to, for, with, or on behalf of any educational institution, regardless of whether such person is engaged to perform such services by the educational institution or through an educational service contractor.

Provides that, with respect to services performed by an educational service worker in an instructional, research, or principal administrative capacity to, for, with, or on behalf of any educational institution, including those operated by the United States government or any of its instrumentalities, divisions, or agencies, benefits shall not be paid during periods of unemployment if services in such educational service worker capacity were performed in the prior year, term, or vacation period and there is a contract or a reasonable assurance of returning to work for any such educational institution or any educational service contractor immediately following the period of unemployment. Such periods of unemployment include those occurring:

(A) between two successive academic terms or years;
(B) during an established and customary vacation period or holiday recess;
(C) during the time period covered by an agreement that provides instead for a similar period between two regular but not successive terms; or
(D) during a period of paid sabbatical leave provided for in the individual's contract.

Provides that, with respect to services performed by an educational service worker in any other capacity to, for, with, or on behalf of any educational institution, including those operated by the United States government or any of its instrumentalities, divisions, or agencies, benefits shall not be paid during periods of unemployment if services in such educational service worker capacity were performed in the prior year, term, or vacation period and there is a reasonable assurance of returning to work for any such educational institution or any educational service contractor immediately following the period of unemployment. If compensation is denied pursuant to this paragraph to an individual, however, and such individual is not offered an opportunity to perform services for any educational institution or to provide services to, for, with, or on behalf of any educational institution for any educational service contractor following the unemployed period, such individual shall be entitled to retroactive payment for each week during that period of unemployment a timely claim was filed and benefits were denied solely by reason of this paragraph. Such periods of unemployment include those occurring:

(A) between two successive academic years or terms; or
(B) during an established and customary vacation period or holiday recess.

Provides that benefits shall not be paid as specified in the above paragraphs to any individual for any week of unemployment if the individual performs such services in an educational institution while in the employ of an educational service agency. For the purposes of this paragraph, the term "educational service agency" means a governmental agency or governmental entity that is established and operated exclusively for the purpose of providing such services to one or more

educational institutions. (All the above provisions relating to educational institutions are effective January 1, 2015.)

Overpayments

Provides that the Commissioner may waive the repayment of an overpayment of benefits if the Commissioner determines such repayment to be inequitable, except if any person receives benefits resulting in such overpayment because of false representations or willful failure to disclose a material fact by such person, inequitability shall not be a consideration and the person shall be required to repay the entire overpayment plus all applicable penalty and interest amounts. Such penalty amounts shall not be waived. Interest accrued on the overpayment is subject to waiver if the Commissioner determines such waiver to be in the best interest of the state of Georgia. (Previously, the penalty was subject to waiver if the Commissioner determined such waiver to be in the best interest of the state of Georgia.)

Provides that a penalty of 15 percent shall be added to any overpayment caused by any person who knowingly makes a false statement or misrepresentation as to a material fact or who knowingly fails to disclose a material fact to obtain or increase benefits, and shall become part of the overpayment. (Previously, the penalty was permissive and was 10 percent.)

INDIANA HB 1083 (Pub. L. 121) — ENACTED March 25, 2014; EFFECTIVE July 1, 2014

Administration

Provides that unemployment benefits are paid from state funds and are not considered paid from any special insurance plan or by an employer. An application for unemployment benefits is not considered a claim against an employer, but is considered a request for unemployment benefits from the unemployment insurance benefit trust fund.

Provides that the Commissioner of the Department of Workforce Development is responsible for the proper payment of unemployment benefits without regard to the level of interest or participation in any determination or appeal by an applicant or an employer.

Provides that an applicant's entitlement to unemployment benefits is determined based on the information that is available without regard to a burden of proof. An agreement between an applicant and an employer is not binding on the Commissioner in determining an applicant's entitlement to unemployment benefits.

Provides that there is no presumption of entitlement or nonentitlement to unemployment benefits. There is no equitable or common law allowance for or denial of unemployment benefits.

Appeals

Provides that any decision of the review board, in the absence of appeal as provided in this section, shall become final 30 days (previously, 15 days) after the date the decision is mailed to

the interested parties. The review board shall mail with the decision a notice informing the interested parties of their right to appeal the decision to the court of appeals of Indiana. The notice shall inform the parties that they have 30 days (previously, 15 days) from the date of mailing within which to file a notice of intention to appeal, and that to perfect the appeal they must request the preparation of a transcript in accordance with the unemployment insurance law.

Coverage

Changes the definition of employer after December 31, 2014, to mean either of the following: (1) an employing unit that has incurred liability for wages payable to one or more individuals, or (2) an employing unit that in any calendar quarter during the current or preceding calendar year paid for service in employment wages of $1 or more, except as provided in Section 2(e), 2(h), and 2(i) of Chapter 7 of the unemployment insurance law. (Up to December 31, 2014, "employer" means the following: (1) any employing unit which for some portion of a day, but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive within either the current or the preceding year, has or had in employment, and/or has incurred liability for wages payable to, one or more individuals (irrespective of whether the same individual or individuals are or were employed in each such day); or (2) any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of $1,500 or more, except as provided in Section 2(e), 2(h), and 2(i) of Chapter 7 of the unemployment insurance law.)

Financing

Provides that the money in the special employment and training services fund shall be continuously available for the prevention, detection, and recovery of delinquent contributions, penalties, and improper benefit payments, and shall not lapse at any time or be transferred to any other fund, except as otherwise provided.

Nonmonetary Eligibility

Repeals the following drug test provisions. "Drug test" means a test that contains at least a 5 drug panel that tests for amphetamines, cocaine, opiates (2,000 ng/ml), PCP, or THC. A drug test must be performed at a United States Department of Health and Human Services certified laboratory, with specimen collection performed by a collector certified by the United States Department of Transportation and the cost of the drug test paid by the employer.

Deletes the following drug test provisions. A drug test is not found to be positive unless: (1) a second confirmation test: (A) renders a positive result that has been performed by a SAMHSA (as defined in IC 22-10-15-3) certified laboratory on the same sample used for the first screen test using gas chromatography mass spectrometry for the purposes of confirming or refuting the screen test results; and (B) has been reviewed by a licensed physician and: (i) the laboratory results described in clause (A); (ii) the individual's medical history; and (iii) other relevant biomedical information confirm a positive result of the drug tests; or (2) the individual who has submitted to the drug test has no valid medical reason for testing positive for the substance found in the drug test.

Provides that payments in lieu of a vacation awarded to an employee by an employing unit shall be considered as deductible income in and with respect to the week in which the vacation occurs (previously, in which same is actually paid).

Provides that holiday pay shall be deemed to constitute deductible income with respect to the week in which the holiday occurs. (Previously, provided that holiday pay which is paid not later than the normal pay day for the pay period in which the holiday occurred for which such payments are made, and holiday pay which is paid after the normal pay day for the pay period in which the holiday occurred shall be considered as deductible income in and with respect to the week in which the same is actually paid.)

Provides that payment of vacation pay shall be deemed deductible income with respect to the week or weeks falling within such vacation period for which vacation payment is made. (Previously, provided that payment of vacation pay, if made prior to the vacation period or not later than the normal pay day for the pay period in which the vacation was taken, shall be deemed deductible income with respect to the week or weeks falling within such vacation period for which vacation payment is made, and payment of vacation pay made subsequent to the normal pay day for the pay period in which the vacation was taken shall be deemed deductible income with respect to the week in which such payment is made.)

Provides that notwithstanding any other provisions, if an individual knowingly: (1) fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period; or (2) fails to disclose or has falsified any fact that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits, the individual forfeits any wage credits earned or any benefits or extended benefits that might otherwise be payable to the individual for any week (previously, for the period) in which the failure to disclose or falsification caused benefits to be paid improperly (previously, in which the failure to disclose or falsification occurs.)

Provides that, regarding an individual's most recent separation from employment before filing an initial or additional claim for benefits, an individual who voluntarily left the employment without good cause in connection with the work or was discharged from the employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until: (1) the individual has earned remuneration in employment at least 8 weeks, and (2) the remuneration earned equals or exceeds the product of the weekly benefit amount multiplied by 8. (Previously, the law provided that with respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of 8 weeks.)

Deletes the following language concerning misconduct: An employer (1) has the burden of proving by a preponderance of the evidence that a discharged employee's conduct was gross

misconduct; and (2) may present evidence that the employer filled or maintained the position or job held by the discharged employee after the employee's discharge. Evidence that a discharged employee's conduct did not result in (1) a prosecution for an offense; or (2) a conviction of an offense may be presented.

Provides that a payment of private unemployment benefits that is conditional upon the signing of a release of employment related claims against the claimant's employer is severance pay and is deductible income as prescribed by IC 22-4-5-2.

LOUISIANA HB 880 (Act No. 529) ENACTED and EFFECTIVE June 5, 2014

Appeals

Provides that an employer may apply for review of any liability determination and any tax rate resulting from that determination within 30 days after the mailing of the notice to the employer. (Previously, an employer had to file for a review not later than 180 days following the date of issuance of such liability determination or tax rate, unless an administrative error resulted in an incorrect determination or tax rate.)

Deletes the following language: The Administrator of the Louisiana Workforce Commission shall, not later than October 1 of each year, render a statement to each employer of benefits paid each individual and charged to his experience-rating record for the12-month period ending the previous June 30. However, the administrator shall, effective with the quarter ending September 30, 1954, and subsequent calendar quarters, render a statement to each employer of benefits paid each individual and charged to his experience-rating record.

Deletes the option of allowing employers to file applications to review notices of benefit charges, in the absence of mailing, within 25 days of the delivery of the notice.

Provides that no employer that was a party to the separation determination, reconsidered determination, or decision, or that was issued a notice of chargeability shall have standing to contest the quarterly charge statement. (Previously, the law provided that no employer shall have standing in any proceeding involving the chargeability of benefits to his experience-rating record to contest the chargeability to his record of any benefits paid in accordance with a determination, reconsidered determination, or decision of which he was given notice and an opportunity to be heard, or to contest the chargeability to his record of any benefits on the grounds of potential disqualification because of circumstances surrounding separation from employment if he was not entitled to notice of the determination, reconsidered determination, or decision under which such benefits were paid.)

Provides that if an employer who was not a party to the separation determination, reconsidered determination, or decision, or who was not issued a determination of chargeability, alleges in his application for review of the quarterly charge statement that benefits were not properly charged to his experience-rating record, the administrator shall affirm, modify, or reverse such charges by issuing a determination of chargeability. (Previously, the law provided that subject to certain

limitations, if an employer in his application for review alleges error in the determination, reconsidered determination, or decision under which any benefits charged to his experience-rating record were paid, such determination, reconsidered determination, or decision shall be deemed and held to be of no force and effect as against such employer, notwithstanding anything to the contrary. The administrator shall affirm, modify, or reverse such determination, reconsidered determination, or decision, acting in accordance with certain procedures insofar as applicable. Notice of the administrator's action shall be given and appeal therefrom may be taken, provided that in any such proceedings the employer shall be entitled to notice and shall otherwise have the same rights as a party entitled to notice thereunder. The administrator shall adjust the experience-rating record of an employer in accordance with any reconsidered determination or decision modifying or reversing the determination, reconsidered determination, or decision alleged to be in error by the employer, and shall affirm or modify any contribution rate based upon such experience-rating record.)

Deletes the following language: Subject to certain limitations, if an employer alleges that certain benefits are not properly chargeable to his experience-rating record on grounds other than error in the determination, reconsidered determination, or decision under which the benefits were paid, the administrator shall give him an opportunity for a fair hearing, and on the basis of the Administrator's findings and conclusion shall make such adjustments in the employer's experience-rating record and contribution rate as may thereunder be required. The employer shall be promptly notified of the administrator's action which shall become final unless within 20 days after the mailing of notice thereof to his last known address or in the absence of mailing within 15 days of delivery of such notice a petition for judicial review is filed in the district court of the employer's domicile. In all proceedings, the findings of the administrator as to facts shall be presumed to be prima facie correct if supported by substantial and competent evidence. These proceedings shall be heard in summary manner and shall be given precedence over all other civil cases except in certain cases. An appeal may be taken from the decision of the district court in the same manner, but not inconsistent with the provisions of the law, as is provided for in other civil cases.

Provides that the determination of an employer's rate of contribution shall be conclusive and binding, unless within 30 (previously 20) days after the mailing of notice the employer files an application for review and redetermination. If such review is granted, the employer shall be promptly notified and granted an opportunity for a fair hearing. The employer shall be promptly notified of the administrator's action from the hearing, which action shall become final unless within 30 (previously 20) days after the mailing of notice a petition for judicial review is filed.

Provides that the determination of chargeability of benefits to base-period employers shall be conclusive and binding upon any such base-period employer unless an appeal (previously, an application for initial review) is filed within 30 (previously 20) days after the date of mailing of any such determination. If appealed, then upon being given the opportunity to be heard, the employer shall be promptly notified of the administrative law judge's (previously, administrator's) action, which shall be final unless the employer files a petition for judicial review within 30 (previously 20) days of the date of mailing such action. In any court proceeding, the findings of the administrative law judge (previously, administrator) as to facts shall be presumed to be prima facie correct, if supported by substantial and competent evidence.

(Previously, the law provided that, upon initial review, the administrator shall affirm, modify, or reverse such determination of chargeability. The employer shall be promptly notified in writing of the administrator's initial review, which shall become final unless the employer within 20 days after the date of mailing of the decision of review requests a hearing to appear before the administrator.)

Provides that no such determination on the misclassification of employees as independent contractors shall be final or effective, and no resulting administrative penalty shall be assessed, unless the administrator first provides the employer with written notification by certified mail of the determination, including the amount of the proposed contributions, interest, and penalties determined to be due and of the opportunity to request a fair hearing, of which a record shall be made within 30 (previously 10) days of the mailing of such notice. If the employer does not request a hearing within the 30-day (previously 10-day) period the determination shall become final and effective, and the contributions, interest, and penalties due shall be assessed.

Provides that, if an employer fails to make and file any report required or to pay any contributions, interest, penalty, or other payments due, or if a report made and filed does not correctly compute the liability of the employer, the administrator shall cause an audit, investigation, or examination to be made to determine the liability, contributions, interest, and penalty due by the employer, or if no report has been filed he shall determine the liability, contributions, interest, and penalty by estimate or otherwise and send a notice to the employer setting out the determination of liability, contributions, interest, and penalty due and informing the employer of his intent to assess the amount of the determination against the employer after 30 (previously 10) calendar days from the date of the notice. Unless the employer appeals (previously protests) the determination within the 30-day (previously 10-day) period, the assessment shall become final. At the expiration of the 30-day (previously 10-day) period or at the expiration of such time as may be necessary for the administrator to consider any appeal (previously protest) filed to such notice, the administrator may proceed to assess the contributions, interest, and penalty that he determines to be due under the law.

Provides that, when an employer is dissatisfied with the final assessment, he may within 30 (previously 10) days of the date of the notice of assessment file a petition for judicial review of the assessment.

Provides that, if the administrator furnishes a written notice rejecting or revoking an application for registration because it is incomplete, it lacks the required supplements, or is due to misrepresentation, the applicant may request a hearing before the administrator within 30 days of mailing (previously receipt) of the written statement.

Provides that, if the administrator furnishes a professional employer organization with a written notice of the right to an administrative hearing prior to revoking a registration or rejecting an application, the applicant may request a hearing before the administrator within 30 days of mailing (previously, receipt) of the written statement.

MASSACHUSETTS Rule 10334 ADOPTED and EFFECTIVE June 20, 2014

<u>Overpayments</u>

Provides that fault, as used in the phrase "without fault", applies only to the fault of the overpaid claimant. Fault on the part of the Department of Labor and Workforce Development in making the overpayment does not relieve the overpaid claimant of liability for repayment. In determining whether an individual is at fault, the Director, Department of Workforce Development, or the Director's authorized representative will consider the nature and cause of the overpayment and the capacity of the particular claimant to recognize the error resulting in the overpayment, such as the claimant's age and intelligence as well as any physical, mental, educational, or linguistic limitation, including lack of facility with the English language. A good faith mistake of fact by the claimant in the filing of a claim for benefits that results in an overpayment of benefits does not constitute fault. A claimant shall be at fault if the overpayment resulted from the claimant: (a) furnishing information that the claimant knew, or reasonably should have known, to be incorrect; (b) failing to furnish information that the claimant knew or reasonably should have known to be material; or (c) accepting a payment that the claimant knew, or reasonably should have known, was incorrect. (Previously, the definition did not provide examples of the nature and cause of the overpayment and the capacity of the particular claimant to recognize the error resulting in the overpayment, and did not provide that the claimant "reasonably" should have known.)

NEBRASKA LB 961 ENACTED April 16, 2014
EFFECTIVE July 16, 2014

Extensions and Special Programs

Repeals the previous short-time compensation program, and creates the following short-time compensation program under the Nebraska Employment Security Law, operative October 1, 2016 (or as noted), by providing that:

- Affected unit means a specified plant, department, shift, or other definable unit which includes 3 or more employees to which an approved short-time compensation plan applies.

- Commissioner means the Commissioner of Labor or any delegate or subordinate responsible for approving applications for participation in a short-time compensation plan.

- Health and retirement benefits means employer-provided health benefits and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code, or contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code, which are incidents of employment in addition to the cash remuneration earned.

- Short-time compensation means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the Employment Security Law.

- Short-time compensation plan means a plan submitted by an employer, for written approval by the Commissioner, under which the employer requests the payment of short-time compensation to workers in an affected unit of the employer to avert layoffs.

- Unemployment compensation means the unemployment benefits payable under the Employment Security Law other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

- Usual weekly hours of work means the usual hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed 40 hours and not including hours of overtime work.

- An employer wishing to participate in the short-time compensation program shall submit a signed written short-time compensation plan to the Commissioner for approval. The Commissioner shall develop an application form to request approval of a short-time compensation plan and an approval process. The application shall include:

  (1) the affected unit or units covered by the plan, including the number of full-time or part-time employees in such unit, the percentage of employees in the affected unit covered by the plan, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number, and any other information required by the Commissioner to identify plan participants;
  (2) a description of how employees in the affected unit will be notified of the employer's participation in the short-time compensation plan if such application is approved, including how the employer will notify those employees in a collective-bargaining unit as well as any employees in the affected unit who are not in a collective-bargaining unit. If the employer will not provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice;
  (3) a requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a short-time compensation plan application may be approved, which shall be not less than 10 percent and not more than 60 percent. If the plan includes any week for which the employer regularly provides no work due to a holiday or other plant closing, then such week shall be identified in the application;
  (4)(a) certification by the employer that, if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced, or to the same extent as other employees not participating in the short-time compensation program;

(b) for defined benefit retirement plans, the hours that are reduced under the short-time compensation plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation;
(c) notwithstanding subdivisions (4)(a) and (b) above, an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the short-time compensation program and to those employees who are participating;
(5) certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, temporary or permanent, or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the short-time compensation plan;
(6) certification by the employer that the short-time compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment;
(7) agreement by the employer to: furnish reports to the Commissioner relating to the proper conduct of the plan; allow the Commissioner access to all records necessary to approve or disapprove the plan application and, after approval of a plan, to monitor and evaluate the plan; and follow any other directives the Commissioner deems necessary for the agency to implement the plan and which are consistent with the requirements for short-time compensation plan applications;
(8) certification by the employer that participation in the short-time compensation plan and its implementation is consistent with the employer's obligations under applicable federal and state laws;
(9) the effective date and duration of the plan that shall expire not later than the end of the 12th full calendar month after the effective date;
(10) certification by the employer that it has obtained the written approval of any applicable collective-bargaining unit representative and has notified all affected employees who are not in a collective-bargaining unit of the proposed short-time compensation plan;
(11) certification by the employer that it will not hire additional part-time or full-time employees for the affected unit while the short-time compensation plan is in effect; and
(12) any other provision added to the application by the Commissioner that the United States Secretary of Labor determines to be appropriate for purposes of a short-time compensation program.

- The Commissioner shall approve or disapprove a short-time compensation plan in writing within 30 days after its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be allowed to submit another short-

time compensation plan for approval not earlier than 45 days after the date of the disapproval.

- A short-time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the Commissioner, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the 12th full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the Commissioner.

- If a short-time compensation plan is revoked by the Commissioner, the plan shall terminate on the date specified in the Commissioner's written order of revocation.

- An employer may terminate a short-time compensation plan at any time upon written notice to the Commissioner. Upon receipt of such notice from the employer, the Commissioner shall promptly notify each member of the affected unit of the termination date.

- An employer may submit a new application to participate in another short-time compensation plan at any time after the expiration or termination date.

- The Commissioner may revoke approval of a short-time compensation plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

- The Commissioner may periodically review the operation of each employer's short-time compensation plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the short-time compensation plan, and violation of any criteria on which approval of the plan was based.

- An employer may request a modification of an approved plan by filing a written request with the Commissioner. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the short-time compensation plan. The Commissioner shall approve or disapprove the proposed modification in writing within 30 days after receipt and promptly communicate the decision to the employer.

- The Commissioner may approve a request for modification of the plan based on conditions that have changed since the plan was approved if the modification is consistent with and supports the purposes for which the plan was initially approved. A modification does not extend the expiration date of the original plan, and the

Commissioner shall promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification.

- An employer is not required to request approval of a plan modification from the Commissioner if the change is not substantial, but the employer must report every change to the plan to the Commissioner promptly and in writing. The Commissioner may terminate an employer's plan if the employer fails to meet this reporting requirement. If the Commissioner determines that the reported change is substantial, the Commissioner shall require the employer to request a modification to the plan.

- An individual is eligible to receive short-time compensation with respect to any week only if the individual is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation and, during the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan, which was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed.

- Notwithstanding any other provisions of the Employment Security Law relating to availability for work and actively seeking work, the individual is available for the individual's usual hours of work with the short-time compensation employer, which may include participating in training to enhance job skills that is approved by the Commissioner, such as employer-sponsored training or training funded under the federal Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.

- Notwithstanding any other provision of law, an individual covered by a short-time compensation plan is deemed unemployed in any week during the duration of such plan if the individual's remuneration as an employee in an affected unit is reduced based on a reduction of the individual's usual weekly hours of work under an approved short-time compensation plan.

- The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

- An individual may be eligible for short-time compensation or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an individual be paid short-time compensation benefits for more than 52 weeks under a short-time compensation plan.

- The short-time compensation paid to an individual shall be deducted from the maximum entitlement amount of unemployment compensation established for that individual's benefit year.

- Provisions applicable to unemployment compensation claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with short-time

compensation provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

- The following provisions apply to individuals who work for both a short-time compensation employer and another employer during weeks covered by the approved short-time compensation plan:

    - if combined hours of work in a week for both employers does not result in a reduction of at least 10 percent, or, if higher, the minimum percentage of reduction required to be eligible for a short-time compensation, of the usual weekly hours of work with the short-time employer, the individual shall not be entitled to short-time compensation;
    - if the combined hours of work for both employers results in a reduction equal to or greater than 10 percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, of the usual weekly hours of work for the short-time compensation employer, the short-time compensation payable to the individual is reduced for that week and is determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, or more of the individual's usual weekly hours of work. A week for which benefits are paid shall be reported as a week of short-time compensation; and
    - if an individual worked the reduced percentage of the usual weekly hours of work for the short-time compensation employer and is available for all his or her usual hours of work with the short-time compensation employer, and the individual did not work any hours for the other employer, either because of the lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time compensation for that week. The benefit amount for such week shall be calculated as provided in these provisions.

- An individual who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of unemployment compensation to which he or she would otherwise be eligible.

- An individual who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment compensation for that week subject to the disqualifying income and other provisions applicable to claims for regular compensation.

- An individual who has received all of the short-time compensation or combined unemployment compensation and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits under section 48-

628.02 and, if otherwise eligible under such section, shall be eligible to receive extended benefits.

- The Nebraska Department of Labor-Workforce Development shall submit an annual report to the Governor and electronically to the Legislature on the short-time compensation program trends, including the number of employers filing short-time compensation program plans, the number of layoffs averted through the use of the short-time compensation program, the amount of short-time compensation program benefits paid, and other information pertinent to the short-time compensation program.

- The Commissioner of Labor shall submit an annual report to the Governor, the Speaker of the Legislature, and the chairpersons of the Appropriations Committee and the Business and Labor Committee of the Legislature describing expenditures made pursuant to these provisions. The report submitted to the committees and the Speaker of the Legislature shall be submitted electronically. (Operative July 16, 2014.)

Financing

Provides for the following under the created short-time compensation program:

- Short-time compensation shall be charged to the employer's experience account in the same manner as unemployment compensation is charged. Employers liable for payments in lieu of contributions shall have short-time compensation attributed to service in their employ in the same manner as unemployment compensation is attributed. (Operative October 16, 2014.)

- A short-time compensation plan will only be approved for a contributory employer that (a) is eligible for experience rating, (b) has a positive balance in the employer's experience account, (c) has filed all quarterly reports and other reports required under the Employment Security Law, and (d) has paid all obligation assessments, contributions, interest, and penalties due through the date of the employer's application. (Operative October 16, 2014.)

- A short-time compensation plan will only be approved for an employer liable for making payments in lieu of contributions that has filed all quarterly reports and other reports required under the Employment Security Law and has paid all obligation assessments, payments in lieu of contributions, interest, and penalties due through the date of the employer's application. (Operative October 16, 2014.)

- The Department shall not use general funds to implement the short-time compensation program. The department shall use any and all available federal funds to implement the short-time compensation program including, but not limited to, federal funds distributed to the state under Sections 903(c), 903(d), 903(f), and 903(g) of the federal Social Security Act, as amended. (Operative October 16, 2014.)

- There is hereby appropriated (1) $1,797,999 from federal funds for FY 2014-15 and (2) $1,576,853 from federal funds for FY 2015-16 to the Department of Labor, for Program 31, to aid in carrying out the provisions of the short-time compensation program. (Operative July 16, 2014.)

- There is included in the appropriation to this program for FY 2014-15 $1,797,999 and for FY 2015-16 $1,576,853 federal funds distributed to the state under Sections 903(c), 903(d), 903(f), and 903(g) of the federal Social Security Act, as amended, which shall only be used to implement the provisions of the short-time compensation program. (Operative July 16, 2014.)

- The Department of Labor shall submit a schedule of proposed expenditures of the appropriation of Sections 903(c), 903(d), 903(f), and 903(g) funds made for administrative purposes for fiscal years beginning on or after July 1, 2007, to the Legislature as a part of the regular budget submission process. All provisions of subsection (2) of section 48-621 except subdivision (2)(a)(i) shall apply to this appropriation of sections 903(c), 903(d), 903(f), and 903(g) funds. (Operative July 16, 2014.)

NEW HAMPSHIRE Rule 8363 ADOPTED June 12, 2014
EFFECTIVE December 31, 2013

Monetary Entitlement

Provides that an individual who has established a benefit year shall not be eligible to receive benefits in the individual's next benefit year unless the individual has earned at least $700 of wages during or subsequent to the established benefit year and the wages were earned: (1) in employment as defined in RSA 282-A:9 of the unemployment compensation law; (2) for services in a state other than New Hampshire which if such services had been performed in New Hampshire would have been employment as defined in RSA 282-A:9 of the unemployment compensation law; or (3) for services as described at RSA 282-A:9, IV(f) of the unemployment compensation law even though otherwise excluded from employment in RSA 282-A:9 of the unemployment compensation law.

NEW HAMPSHIRE Rule 8365 ADOPTED June 12, 2014
EFFECTIVE October 21, 2013

Financing

Provides that, whenever required by the Department of Employment Security, a notice of claim and verification request form (formerly known as "Request To Employer for Separation Information") shall be sent either by e-mail notice or by mail by the certifying officer to the employer or employing unit for whom the claimant last performed services. Failure of the employer or employing unit to provide the information required by the Department within the set periods of time shall be deemed an irrevocable waiver of its right to be heard before the determination is made. Benefits charged to its account as a result of the determination shall

remain so charged even though the claimant is held not to be entitled to unemployment compensation by reason of a later decision.

NORTH CAROLINA SB 42 (CH 117) ENACTED and EFFECTIVE August 25, 2014

Administration

Defines the term "confidential information" to mean any unemployment compensation information in the records of the Division of Employment Security that pertains to the administration of the North Carolina Employment Security Law that is required to be kept confidential under 20 C.F.R. Part 603, including claim information and any information that reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or that could foreseeably be combined with other publicly available information to reveal any such particulars.

Provides that confidential information is exempt from the public records disclosure requirements of Chapter 132 of the General Statutes. Confidential information may be disclosed only as permitted in the Employment Security Law. Any disclosure of confidential information must be consistent with 20 C.F.R. Part 603, any written guidance consistent with this regulation, and any successor regulation. Confidential information obtained, compiled, or maintained by the Division of Employment Security may not be disclosed except as provided in the Employment Security Law.

Provides that the Division may disclose final decisions and the records of the hearings that led to those decisions only after the expiration of the appeal rights.

RHODE ISLAND Rule 5622 ADOPTED June 24, 2014
EFFECTIVE July 13, 2014

Appeals

Provides that, in appeals from a Director's determination to an appeals body other than a court of law, if a claimant retains an attorney-at-law to represent him or her, the attorney shall be entitled to a counsel fee of 10 percent (previously, 15 percent) of the amount of the benefits at issue before the appeals body but not less than $50, which the Director shall pay out of the employment security administrative funds; provided, however, the attorney-at-law must submit his or her request for a counsel fee to the Director not later than 2 years from a final adjudication of the case by the appeals body. Any requests for counsel fees after the 2-year period will not be allowed by the Director.

Nonmonetary Eligibility

Provides that the effective date of a new valid claim or additional claim shall be established as the Sunday of the week in which the individual contacts and files a claim in accordance with procedures described by the Director, Rhode Island Department of Labor and Training. Any

individual who fails without good cause to contact the call center in accordance with these provisions shall not be eligible to receive benefits for the week(s) in which such failure occurs.

Provides that such personal efforts to find suitable work as are customarily made by persons in the same occupation or in any other occupation for which the claimant is reasonably suited, commensurate with current economic conditions include but are not limited to:

(1) registering for work with the Employment Service,

(2) conducting an active, independent work search with at least three verifiable work search contacts in each week that benefits are claimed and maintaining a written record of the work search,

(3) submitting a weekly work search to the Department of Labor and Training as prescribed by the Director and as indicated in the Department's guidelines for an active and independent search for work. The following information must be included in the record about each contact:

- The name and address of the company
- The date you applied for work
- The manner by which you applied for work: in person, by sending a résumé, via the internet, etc., and
- The specific position and shift for which applied,

(4) posting a resume on the Employment Services' online job seeker tool kit and inquiring upon any job opportunities presented by the department,

(5) completing a skills review or similar activity through Employment Service as prescribed by the Director, and

(6) registering on the virtual recruiter or similar tool through Employment Service as prescribed by the Director.

Provides that the Director has discretion in determining whether to require one or all activities identified in above paragraphs (4), (5), and (6). Furthermore, the Department is an equal opportunity service provider. Accordingly, the Director has discretion to afford claimants alternative means for satisfying the above requirements if the Director finds that the claimants are Limited English Proficiency (LEP) individuals and/or qualified individuals with a disability as defined by federal and state law.

Provides that, in addition to the above activities, all individuals will make themselves available for profiling services when offered, provided, however, that no claimant shall in order to establish his/her availability, be required to perform any unreasonable act in seeking work to pursue a search which has no definite basis expectation that it would result in re-employment.

Provides that the Department shall provide every claimant with written guidelines for an active and independent search for work. Individuals who qualify for a work search waiver under Rule 35 of the Rhode Island Employment Security Rules will also qualify for a waiver from the additional activities listed above.

Provides that an individual who fails to report to an office of the Department when notified of an appointment, fails to provide any documentation requested by the Department, or fails to comply with an instruction given by the Director or his/her designee shall be denied benefits for the week in which such failure occurs, unless the reason for such failure to comply with the Department's requirements is based upon good cause as shall be determined by the Director.

SOUTH CAROLINA SB 109 (Act No. 265) ENACTED and EFFECTIVE June 6, 2014

Coverage

Exempts from coverage an individual or entity who owns or holds a lease purchase agreement for a tractor, trailer, or other vehicle and provides services as a driver under an independent contractor agreement to a motor carrier, and certain drivers performing service for an automobile dealer related to the transport of individual vehicles to a seller or purchaser.

SOUTH CAROLINA SB 1100 (Act No. 266) ENACTED June 6, 2014 EFFECTIVE January 1, 2015

Coverage

Exempts service performed by an officer of a corporation from coverage. A corporation may elect, in writing, to cover its officers and must notify its officers they are ineligible for unemployment benefits if they do not elect to provide coverage. Coverage must be provided for at least 2 calendar years and shall terminate on January 1 subsequent to the 2-year period if the employer files a written application before January 15 of that year. Services provided for a religious, charitable, educational, or other organization or for an Indian tribe are not subject to the provisions.

TENNESSEE HB 1386 (CH 762) ENACTED April 24, 2014 EFFECTIVE July 1, 2014

Financing

Provides that an employer relocating to Tennessee on or after July 1, 2014, may elect to use an interstate transfer of the employer's experience rating and requires the employer to provide an authenticated account history for the determination. The use by the Department of Labor and Workforce Development of the interstate transfer of experience may be suspended if the trust fund balance is lower than or equal to seven hundred million dollars and the employer's rate shall revert to the industry rate designated at the time of the suspension. Provides that the use of the interstate transfer of the employer's experience shall not apply if it violates federal law or causes the Department a loss of federal funding.

WISCONSIN AB 684 (Act No. 276) ENACTED April 16, 2014 EFFECTIVE April 20, 2014

Financing

Provides that an application for certain certifications or registrations shall be denied, suspended, or restricted for an employer with delinquent unemployment compensation contributions.

Provides that an employer is eligible for the reduced tardy filing fee if the employer files its quarterly report within 30 days after the Department of Workforce Development assesses a tardy filing fee (previously the employer was eligible for the reduced fee if the report was filed within 30 days of the due date).

Nonmonetary Eligibility

Provides that an individual is ineligible for benefits any week that he or she fails to appear and answer questions relating to eligibility for benefits or certain demographic information (eliminates the claimant's ability to show good cause for not providing the information).